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October 20, 1999

Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 - 12th Street, Southwest
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Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

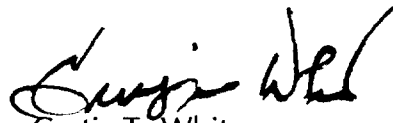
Re: WT Docket No. 97-81

Dear Ms. Salas:

On behalf of East Bay Municipal Utility District, I enclose an original and four copies of its Reply Comments in the above-captioned proceeding, along with an additional copy (file) to be time-stamped and returned to this Office. I also enclose a 3.5 diskette containing the Comments submitted herewith pursuant to the Commission's Order in this Rule Making.

Kindly contact the undersigned or Jewell Elliott, Esq. -- (202)537-3599 -- of these offices to the extent there are questions or you require anything further.

Sincerely yours,


Curtis T. White

Enclosures

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Before the
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's Rules)
Regarding Multiple Address Systems)
_____)

WT Docket No. 97-81

REPLY COMMENTS OF
EAST BAY MUNICIPAL UTILITY DISTRICT

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Its Attorneys

October 20, 1999

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
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REPLY COMMENTS OF EAST BAY MUNICIPAL UTILITY DISTRICT

East Bay Municipal Utility District ("EBMUD/District"), by its attorneys and pursuant to Section 1.45 of the Commission's rules, 47 C.F.R. §1.45, hereby files its Reply Comments in the above-captioned Rule Making on Multiple Address Systems ("MAS"), pursuant to the *Further Notice of Proposed Rule Making and Order* (FCC 99-101), released July 1, 1999 ("FNPRM").

On September 17, 1999, EBMUD filed Initial Comments in the this matter and delineated its support for certain Commission proposals, to wit:

1. The appropriate recognition of need to ensure sufficient and unencumbered spectrum for "public safety" licensees/users, and the corresponding proposal to set aside five (5) of forty (40) channel pairs for public safety and Government use;
2. Adoption of the broader definition of "public safety radio services" for purposes of determining spectrum exempt from competitive bidding dictates set out in Section 309(j) of the 1993 Budget Act; and

3. Recognition of the need to ensure that the final outcome of this proceeding does not, in any manner, cause undue hardship or harm to existing licensees, particularly those statutorily obligated to provide critical services directly related to the protection of safety, life and property.

Having reviewed Comments of other Parties participating in this matter, EBMUD believes it necessary to offer these further categorical observations.

I. **THE COMMISSION SHOULD LIFT THE FREEZE FOR CRITICAL INFRASTRUCTURE INDUSTRY LICENSING IN THE 928/952/956 BAND**

Through its *FNPRM*, the Commission sought comments on its proposals for the future of 900 MHz MAS licensing and, in doing so, invited interested parties to comment, "particularly the predominant users of MAS spectrum"¹

With particular regard to the licensing freeze, the Commission discussed various proposals under consideration for site-by-site licensing v. geographic licensing implemented as part of the competitive bidding procedures.² Because of the "uncertainty" generated by this issue (site v. geographic)³ and, perhaps, confusion reasonably anticipated in connection with the commercial interests previously shown in the spectrum,⁴ the Commission concluded it would immediately suspend the acceptance and processing of applications in all MAS bands, and thus imposed its freeze, effective upon release of its *FNPRM*.

¹ *FNPRM* at ¶7.

² *Id.*

³ *FNPRM* at ¶28.

⁴ *E.g.*, *FNPRM* at ¶¶4-6, wherein the Commission takes notice of the 50,000, plus, applications filed in the 932/941 band during a five-day window in January/February, 1992, and references the overwhelming interest in commercial operations of MAS facilities.

Various and numerous parties have offered comment in response to the freeze, either in the form of Special Requests⁵, or as part of their Comments filed in the proceeding.⁶ These Comments generally request that the Commission fashion a limited exception to the universal freeze it has imposed, and offer as support therefor, among others, the following reasons:

- a. The freeze creates an undue burden on Critical Infrastructure Industries (CII);⁷
- b. Sudden imposition of the freeze encompassing all MAS bands – including that used primarily by CII entities – has already made it impossible for one CII licensee to implement its contemplated automatic meter reading (AMR) platform in order to improve real-time monitoring, as well as system integrity and reliability;⁸
- c. The freeze makes it difficult (if not virtually impossible) for CII entities to continue to upgrade their facilities – which, in the aggregate, they have invested more than \$800 million on more than 14 million MAS receivers – during the pendency of this Rule Making.⁹

⁵ Emergency Request for Limited Exception to Application Freeze, CII Petitioners (United Telecom Council, Association of American Railroads and American Petroleum Institute)(July 23, 1999).

⁶ *E.g.*, Comments of Public Service Company of Colorado (September 17, 1999) at p. 3, Comments of Consolidated Edison Company of New York, Inc. (September 17, 1999) at p 19, and Combined Comments of Georgia Power Company, Alabama Power Company, Mississippi Power Company, Gulf Power Company, and Savannah Electric Power Company (September 17, 1999) at p. 20.

⁷ Comments of CII Petitioners at pp. 4-13.

⁸ Comments of Public Service Company of Colorado at pp. 3-6.

⁹ See Comments of CII Petitioners at pp. 9-12.

d. The "principal users" of MAS spectrum rely heavily on MAS facilities to handle daily operating functions as well as emergency communications involving public health and safety;¹⁰ and

e. The instant freeze is markedly different from that involving (presumed) commercial applications in the 932/941 MHz bands in that it (i) involves applications and licenses which are statutorily exempt, and (ii) it contravenes Congressional intent¹¹

Finally, in establishing the licensing freeze here, the Commission notes its action was consistent with the approach taken in all other existing services where geographic licensing and auction rules were proposed.¹² However, that premise conflicts directly with Commission data and its acknowledgement that the apparent predominant use in 928/952/956 MHz bands is for private internal purposes and, as such, the spectrum is statutorily and expressly exempt under provisions contained in the Balanced Budget Act of 1997.¹³

For all of the foregoing reasons, EBMUD urges the Commission to fully consider and craft a limited exception to the freeze, thus permitting CII entities to file applications in the 928/952/956 MHz bands during pendency of this proceeding.

¹⁰ E.g., Comments of East Bay Municipal Utility District (September 17, 1999), Consolidated Edison Company of New York, Inc. (September 17, 1999) and Comments of Public Service Company of Colorado (September 17, 1999).

¹¹ See Special Request of CII Petitioners (July 23, 1999).

¹² *FNPRM* at ¶28.

¹³ Pub. L. No. 105-33, Title ((, 111 Stat. 251 (1997)(Balanced Budget Act of 1997).

II. THE COMMISSION SHOULD RETAIN SITE-BY-SITE LICENSING

The Balance Budget Act of 1997 instructs the Commission to employ its auction authority to award licenses, except where licenses are issued for:

- [P]ublic safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organization, that–
 - (i) are used to protect the safety of life, health and property; and
 - (ii) are not made commercially available for the public....¹⁴

The plain meaning of the statutory language makes clear that licenses used predominantly by CII entities in the protection of safety of life, health and property are exempt from auction authority. As such, there is neither a need nor a basis to modify procedures governing MAS licensing where such uses are involved.

More specifically, MAS applications have not generally been mutually exclusive because of the pre-filing engineering and coordination requirements. Moreover, where there is system conflict or potential interference, MAS licensees have historically (i) acknowledged the existence of risk of interference, (ii) expressly set out a willingness to accept the risk of such interference, and (iii) expressly agreed to work mutually to resolve any harmful interference which may arise by and among their respective systems.

Because these frequencies are exempt from auction and the Commission's auction authority, and are historically and necessarily subject to prior coordination, there is no need to modify the existing site-by-site licensing rules, and EBMUD urges the Commission to refrain from doing so.

¹⁴ *Balanced Budget Act of 1997, Title III, §3002.*

III. COMPETITIVE BIDDING PROCEDURES

EBMUD offers no comment on the "tiered" bidding credits being considered by the Commission for "Small"¹⁵ and "Very Small" businesses. It does note, however, that in June, 1988, its Board of Directors adopted its Contract Equity (CE) Program, which replaced its former Minority and Women Business Enterprise Program. EBMUD's Contract Equity program represents its continued commitment to contract equity and responsibility to comply with federal and state laws and, under contracting objectives, the CE Program applies to District contracts and prime contractors whenever subcontracting opportunities are available under certain (enumerated) and categorical conditions.

In view of the foregoing, and given EBMUD's history of promoting equity and equality, it commends the Commission for its effort to meet its statutory obligations and for developing mechanisms "to permit a full range of small businesses to potentially provide service" in the MAS spectrum.¹⁶

¹⁵ The Commission has proposed that "Small" business be defined as a business (together with attributable investors and affiliates) which has average gross revenues for three preceding years of \$15 million or less, and "Very Small" businesses must have average gross revenues for the three preceding years of \$3 million or less. With these definitions and using a weighted formula, "Small" businesses would receive a "bidding credit" of 25%, and "Very Small" businesses would receive a credit of 35%.

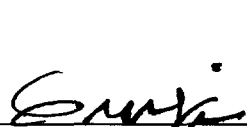
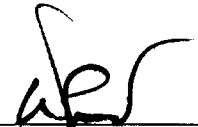
¹⁶ *FNPRM* at ¶27.

IV. CONCLUSION

WHEREFORE, the premises considered, EBMUD requests the Commission adopt final rules consistent with the matters hereinbefore set forth, as well as the specific recommendations contained in its Initial Comments filed in this proceeding.

Respectfully submitted,

EAST BAY MUNICIPAL UTILITY DISTRICT

By:  

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